

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

James A. Butler,

Plaintiff,

v.

John Does; Jane Does, and AW's;
NFN Blocker, MD;
NFN Serrano, Clinical Director, sued in
their individual and official capacity,

Defendants.

C.A. No. 9:08-cv-02760-JMC

ORDER

Pro se Plaintiff James A. Butler brings this action against Defendants pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), claiming constitutional deprivation of medical care with deliberate indifference and damages under the Federal Tort Claims Act. This matter is before the court on Defendants' Motion for Summary Judgment [Doc. # 60].

The Magistrate Judge originally recommended the case be dismissed for lack of prosecution after Butler failed to respond to the motion [Doc. # 67], but the court vacated the Report and Recommendation upon Butler's assertion that he did not receive Defendants' Motion for Summary Judgment. *See* [Doc. # 73] The court gave Butler an extension in which to respond to the summary judgment motion. *Id.* However, Butler failed to respond and the Magistrate Judge issued a second Report and Recommendation [Doc. # 76] recommending the case be dismissed with prejudice for lack of prosecution. Butler did not timely object to the Report and the court adopted the Magistrate's recommendation. *See* [Doc. # 78] Approximately one month later, Butler filed a

motion to alter the court's judgment together with a Response in Opposition to Defendants' Motion for Summary Judgment [Doc. # 82]. Defendants consented to the reopening of the case in their Motion in Support of Motion to Alter Judgment [Doc. # 84]. Accordingly, the court granted the motion to alter the judgment and referred the matter back to the Magistrate Judge for his recommendation of Defendants' Motion for Summary Judgment. *See* [Doc. # 85]

The Magistrate Judge's Report and Recommendation [Doc. # 87], filed on February 9, 2010, recommends that the court grant in part and deny in part Defendants' Motion for Summary Judgment [Doc. # 60]. Specifically, the Report suggests the court grant summary judgment as to Plaintiff's *Bivens* claim and deny summary judgment as to Plaintiff's Federal Tort Claims Act claim. The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge's recommendation herein without a recitation.

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Plaintiff was advised of his right to file objections to the Report and Recommendation [Doc. # 87, at 14]. However, Plaintiff has made no objections to the Report and Recommendation. Since

the issuance of the Magistrate Judge's Report and Recommendation, the court has granted Plaintiff two extensions to file objections. Some twenty (20) days after the expiration of the most recent extension, Plaintiff filed his third Motion for Extension of Time [Doc. # 100] to object to the Report and Recommendation. In his third motion for additional time, Plaintiff has not given this court any information regarding the current status of his medical condition or the extent of any limitations that such condition may have on his ability to timely note his objections to the court. Plaintiff only relies on physicians' statements which are outdated and takes a position that is clearly contrary to his demonstrated ability to interact with the court by filing successive, comprehensive motions for extensions of time. This court has taken due consideration of Plaintiff's medical condition and, while this court is sympathetic to Plaintiff's circumstances, he has failed to demonstrate good cause which would warrant yet another extension for a response to the Magistrate's Report. Therefore, the court now denies Plaintiff's Motion for Extension of Time [Doc. # 100].

In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report and Recommendation results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140

(1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation [Doc. # 60] and incorporates it herein. It is therefore **ORDERED** that Defendant's Motion for Summary Judgment [Doc. # 60] is **GRANTED** as to Plaintiff's *Bivens* claim and **DENIED** as to Plaintiff's Federal Tort Claims Act claim. It is further **ORDERED** that Plaintiff's Motion for Extension of Time [Doc. # 100] is **DENIED**.

IT IS SO ORDERED.

s/ J. Michelle Childs
United States District Judge

Greenville, South Carolina
November 30, 2010